

SUBCHAPTER O : ADDITIONAL CONDITIONS AND PROCEDURES FOR WASTEWATER DISCHARGE PERMITS AND SEWAGE SLUDGE PERMITS

§305.531. Establishing and Calculating Additional Conditions and Limitations for TPDES Permits.

The following regulations contained in 40 Code of Federal Regulations Part 122, Subpart C, Permit Conditions, and Part 124, Subpart C, Specific Procedures Applicable to Texas pollutant discharge elimination system (TPDES) permits, which are in effect as of the date TPDES program authorization, as amended, are adopted by reference:

(1) §122.42 -- Additional conditions applicable to specified categories of NODES permits. Section 122.42 provides additional conditions for existing manufacturing, commercial, mining, and silvicultural dischargers, and for publicly owned treatment works (POTWs).

(2) §122.43(a) and (b) -- Establishing permit conditions. Section 122.43 relates to conditions assuring compliance with all applicable requirements of the CWA and regulations.

(3) §122.44 -- Establishing limitations, standards, and other permit conditions applicable to state NODES programs. Section 122.44 relates to technology-based effluent limitations and standards, other effluent limitations and standards, reopener clauses, water quality standards and State requirements, toxic pollutants, notification levels, twenty-four hour reporting, durations for permits, monitoring requirements, pretreatment programs for POTWs, best management practices, reissued permits, privately owned treatment works, grants, sewage sludge, Coast Guard, and navigation.

(4) §122.45 -- Calculating NODES permit conditions. Section 122.45 relates to outfalls and discharge points, production-based limitations, metals, continuous discharges, noncontinuous discharges, mass limitations, pollutants in intake water, internal waste streams, and disposal of pollutants into wells, into POTWs, or by land application.

(5) §122.50 -- Disposal of pollutants into wells, into POTWs, or by land application.

(6) §124.59 -- Conditions requested by the Corps of Engineers and other government agencies.

§305.532. Adoption of Appendices by Reference.

The following appendices contained in 40 Code of Federal Regulations Part 122, which are in effect as of the date of Texas pollutant discharge elimination system (TPDES) program authorization, as amended, are adopted by reference and apply only to TPDES permits:

(1) Appendix A - NODES Primary Industry Categories.

(2) Appendix B - Criteria for Determining a Concentrated Animal Feeding Operation.

(3) Appendix C - Criteria for Determining a Concentrated Aquatic Animal Production Facility.

(4) Appendix D - NODES Permit Application Testing Requirements.

§305.533. Adoption of Environmental Protection Agency Issued Permits and Pretreatment Programs.

On the date of the Texas Natural Resource Conservation Commission assumption of the administration of the Texas Pollutant Discharge Elimination System (TPDES) permit program, after the Environmental Protection Agency (EPA) approves the TPDES permit program, and issuance of national pollutant discharge elimination system (NPDES) permits is delegated from the EPA to the state, the state adopts all EPA permits and pretreatment programs. This provision does not affect the right of the EPA to issue NPDES permits for facilities which expired in fiscal year 1996 or to modify NPDES permits under Clean Water Act, §304(l). If the requirements of a state permit and an EPA permit issued to the same permittee or for the same facility are not of equal stringency, the more stringent requirements shall apply.

Date Adopted: May 8, 1996

Date Effective: June 9, 1996

§305.534. New Sources and New Dischargers.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Existing source - any source which is not a new source or a new discharger.

(2) Facilities or equipment - for the purposes of this section, buildings structures, process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. These terms exclude facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(3) New source, new discharger, and site are defined in §305.2 of this title (relating to Definitions).

(4) Source - any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(b) Criteria for new source determination.

(1) Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in §305.2 of this title (relating to Definitions) and:

(A) it is constructed at a site at which no other source is located; or

(B) it totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(C) its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the director shall consider such factors as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(2) A source meeting the requirements of paragraph (1) of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.

(3) Construction on a site at which an existing source is located results in an amendment subject to §305.62 of this title (relating to Amendments) rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraph (1)(B) or (C) of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

(4) Construction of a new source as defined under §305.2 of this title (relating to Definitions) has commenced if the owner or operator has:

(A) begun, or caused to begin as part of a continuous on-site construction program:

(i) any placement, assembly, or installation of facilities or equipment;

or

(ii) significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(B) entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under this paragraph.

(c) Effect of compliance with new source performance standards. (The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this paragraph.)

(1) Except as provided in paragraph (2) of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable

promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under, Clean Water Act (CWA) §301(b)(2), for the soonest ending of the following periods:

(A) 10 years from the date that construction is completed;

(B) 10 years from the date the source begins to discharge process or other nonconstruction related wastewater; or

(C) the period of depreciation or amortization of the facility for the purposes of the Internal Revenue Code of 1954, §167 or §169 (or both).

(2) The protection from more stringent standards of performance afforded by paragraph (1) of this subsection does not apply to:

(A) additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under CWA, §307(a); or

(B) additional permit conditions in accordance with 40 Code of Federal Regulation (CFR) §125.3, adopted by §308.1 of this title (relating to Criteria and Standard for Imposing Technology-Based Treatment Requirements) controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(3) When a TPDES permit issued to a source with a protection period under paragraph (1) of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of CWA, §301, and any other then applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

(4) The owner or operator of a new source, a new discharger which commenced after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall start-up all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under 40 CFR §122.47(a)(2).

(5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

§305.535. Bypasses from TPDES Permitted Facilities.

(a) Authorized bypass. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (b) and (c) of this section.

(b) Notice.

(1) Anticipated bypass. In accordance with the procedures described in §§305.21 and 305.23 of this title (relating to Emergency Orders, Temporary Orders, and Executive Director Authorizations) if the permittee knows in advance of the need for a bypass, it shall submit prior notice.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in §305.125(9) of this title (relating to Standards Permit Conditions) (24-hour notice).

(c) Prohibition of Bypass.

(1) bypass is prohibited, and the commission may take enforcement action against the permittee for bypass, unless:

(A) bypass was unavoidable to prevent loss of life, personal injury, severe property damage, severe economic loss (except economic loss due to delays in production), or to make necessary and unforeseen repairs to a facility;

(B) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) the permittee submitted notices as required under subsection (b) of this section.

(2) The commission may approve an anticipated bypass in accordance with the procedures described in §§305.21 and 305.23 after considering its adverse effects, if the executive director determines that it will meet the three conditions listed in paragraph (1) of this subsection.

§305.536. Requirements for Applications and Permits with Sludge Related Conditions.

(a) Sludge standards. The permittee shall comply with standards for sewage sludge use or disposal established under the Clean Water Act, §405(d) (40 Code of Federal Regulations, Part 503) within the time provided in the regulations that established such standards, even if the permit has not yet been modified to incorporate standards.

(b) Additional Contents of Applications. In addition to all other requirements for information

described in §305.48 of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits), all treatment works treating domestic sewage shall submit to the executive director within the time frames established in subsection (c) of this section the information described in 40 CFR §§501.15(a)(2)(viii)-(xii), as amended.

(c) Time Frames for Applications.

(1) Any POTW with a currently effective TPDES permit shall submit the application information required by subsection (b) of this section when its next application for TPDES permit renewal is due or within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to POTWs' sludge use or disposal practices, whichever occurs first.

(2) Any other existing treatment works treating domestic sewage not covered under subsection (c)(1) of this section shall submit an application to the executive director within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to its sludge use or disposal practices or upon request of the executive director prior to the promulgation of an applicable standard for sewage sludge use or disposal if the executive director determines that a permit is necessary to protect public health and the environment from any adverse effect that may occur from toxic pollutants in sewage sludge.

(3) Any treatment works treating domestic sewage that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the executive director at least 180 days prior to the date proposed for commencing operations.

(d) Fact Sheets. A fact sheet shall be prepared for every draft permit described in 40 CFR §501.15(d)(4), as amended. The executive director shall send this fact sheet to the applicant and, on request, to any other person. The fact sheet shall include the information required by 40 CFR §501.15(d)(4), as amended.

§305.537. Reporting Requirements for Planned Physical Changes to a Permitted Facility.

Except to the extent that it is less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations §122.41(l)(1), which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference.

§305.538. Prohibitions for TPDES Permits.

No permit may be issued under the conditions prohibited in 40 Code of Federal Regulations §122.4, as amended.

Amendment to: §305.533

Date Adopted: May 8, 1996

Date filed with the Secretary of State: May 17, 1996

Date published with the Texas Register: May 28, 1996

Date Effective: June 9, 1996